

ORIGINAL

Before the
Federal Communications Commission
Washington, D. C. 20554

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Federal Communications Commission
Office of Secretary

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In the Matter of:

Reclassification of License of
FM Station KJEL
(Lebanon, Missouri)

Amendment of §73.202(b),
Table of Allotments,
FM Broadcast Stations,
(Eminence, Missouri)

DA 05-1715
RM-10567

MB Docket No. 01-151
RM-10167

TO: Marlene Dortch, Secretary
Attn: Audio Division

**JOINT PETITION FOR APPROVAL OF AGREEMENT
AND FOR OTHER RELIEF**

Four Him Enterprises, LLC ("Four Him") and Ozark Broadcasting, Inc.
("Ozark"), by their respective attorneys, hereby jointly request the Audio Division to
simultaneously take the following actions:

- A. Approve the Agreement of Settlement attached hereto; and,
- B. Dismiss the application of Ozark (File No. BPH-20030401ABZ)
for full Class C facilities at FM Broadcast Station KJEL, Lebanon,
Missouri (the "Application"); and,
- C. Reconsider the *Memorandum Opinion and Order* (DA 05-1715),
which denied Four Him's Petition for Reconsideration of the
denial of its Petition for Rulemaking; and,
- D. Resolve the proceedings in Docket No. 01-151 without allocating
Channel 276C3 to Eminence, Missouri and, instead, grant Four
Him's Counterproposal, filed September 4, 2001, which proposes
to allocate a different channel to Eminence, Missouri.

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In support thereof, it is alleged:

1. On June 24, 2005, the Audio Division released a *Memorandum Opinion and Order* (DA 05-1715), denying a Petition for Reconsideration filed by Four Him and directed against a staff letter, rejecting Four Him's Petition for Rulemaking. Four Him is the licensee of Station KHZR, Channel 249C3, Potosi, Missouri. In its Petition for Rulemaking, Four Him proposed the substitution of Channel 249C2 for Channel 249C3 at Potosi and modification of the Station KHZR license to specify operation on Channel 249C2. In order to accommodate this upgrade, Four Him proposed channel substitutions at Rolla and Linn, Missouri. The channel substitution at Rolla required the reclassification of Station KJEL, Channel 279C, Lebanon, Missouri to Channel 279C0.

2. Ozark is the licensee of Station KJEL. Ozark filed the above-described Application for full Class C status for Station KJEL and, because of the filing of that Application, the Audio Division rejected Four Him's Petition for Rulemaking and denied Four Him's Petition for Reconsideration.

3. The FCC has now established a window for settlement in rulemaking proceedings. Acting on that window, Four Him and Ozark have entered into discussions, looking toward an amicable settlement of their differences. An Agreement of Settlement has been reached, a copy of which is attached hereto and marked Exhibit A. Under that Agreement, Ozark will dismiss its application for Class C facilities for Station KJEL and join in requesting the Audio Division to reconsider its action, taken by *Memorandum Opinion and Order*, released June 24, 2005, and grant Four Him's Petition for Rulemaking. In return, Four Him will pay Ozark the sum of One Hundred Thousand

Dollars (\$100,000.00), on the terms and under the conditions specified in the Agreement of Settlement.

4. Ozark has filed a Petition for Rulemaking to add Channel 276C3 to Eminence, Missouri and a *Notice of Proposed Rulemaking* has been issued, looking towards the adoption of that proposal, in Docket No. 01-151. The allocation of Channel 276C3 to Eminence, Missouri is inconsistent with the upgrade proposed by Four Him at Potosi, Missouri. Therefore, as part of the Agreement of Settlement, Ozark has agreed that the proceedings in Docket No. 01-151 should be either terminated without adding Channel 276C3 to Eminence or, in the alternative, that a Counterproposal filed by Four Him to allocate a different channel to Eminence should be granted.

5. Approval of the Agreement of Settlement will serve the public interest. It will forestall the filing of an appeal, directed against the Audio Division's *Memorandum Opinion and Order* of June 24, 2005. It will enable an immediate upgrade in the facilities of Station KHZR, Potosi, Missouri. Thus, it will eliminate the need for further litigation, which would otherwise place a burden on the FCC's staff resources. At the same time, it will provide for improved service to the public from Station KHZR.

6. WHEREFORE, it is respectfully requested that the Audio Division simultaneously take the following actions:

- A. Approve the Agreement of Settlement attached hereto; and,
- B. Dismiss the Application; and,
- C. Reconsider the *Memorandum Opinion and Order* (DA 05-1715), which denied Four Him's Petition for Reconsideration of the denial of its Petition for Rulemaking and grant the Petition for Rulemaking filed by Four Him and described in the aforesaid *Memorandum Opinion and Order*; and,

- D. Resolve the proceedings in Docket No. 01-151 without allocating Channel 276C3 to Eminence, Missouri and, instead, grant Four Him's Counterproposal, filed September 4, 2001, which proposes to allocate a different channel to Eminence, Missouri.

Respectfully submitted,

July 25, 2005

FOUR HIM ENTERPRISES, LLC

GAMMON & GRANGE, PC
8280 Greensboro Drive
7th Floor
McLean, VA 22102-3807

By:

A. Wray Fitch III
A. Wray Fitch
Its Attorney

OZARK BROADCASTING, INC.

Law Office of
LAUREN A. COLBY
10 E. Fourth Street
P.O. Box 113
Frederick, MD 21705-0113

By:

Lauren A. Colby
Lauren A. Colby
Its Attorney

AGREEMENT OF SETTLEMENT

Agreement of Settlement, made and entered into this 20th day of July, 2005, by and between Four Him Enterprises LLC, a Missouri limited liability company ("Four Him") and Ozark Broadcasting Inc., a Missouri Corporation ("Ozark").

WITNESSETH:

WHEREAS, Four Him holds the license issued by the Federal Communications Commission ("FCC") for station KHZR, channel 249C3 Potosi, Missouri; and

WHEREAS, Four Him filed a Petition for Rulemaking, proposing the substitution of channel 249C2 for channel 249C3 at Potosi and modification of the license of Station KHZR to specify operation on channel 249C2 (RM-10567) (Potosi Rulemaking); and

WHEREAS, in order to accommodate this upgrade, Four Him proposed channel substitutions at Rolla and Linn, Missouri and the channel substitution at Rolla required the reclassification of Ozark's station at Lebanon, Missouri, KJEL, from a full class C station to a class C0 station; and

WHEREAS, Ozark resisted the reclassification of KJEL and filed an application (File No. BPH-20030401ABZ) ("the Application") to retain full class C status for station KJEL; and

WHEREAS, because of the filing of the Application, the Commission staff rejected Four Him's Petition for Rulemaking; and

WHEREAS, Four Him petitioned the Audio Division for reconsideration but, by *Order* (DA05-1715) released June 24, 2005, the Audio Division denied reconsideration; and

WHEREAS, Four Him has a right to appeal the Audio Division's decision to the full commission; and

WHEREAS, the parties desire to forestall the filing of any such appeal and, instead, to settle their differences on an amicable basis;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, it is agreed as follows:

1. Joint Petition: Within 5 days of the date of execution of this Agreement, the parties hereto will file a joint petition, asking the FCC's Audio Division to simultaneously do the following:

- a. Approve this Agreement;
- b. Dismiss the Application;
- c. Reconsider the Audio Division's Memorandum Opinion and Order (DA05-1715) (Petition for Reconsideration) and grant of the Potosi Rulemaking; and
- d. Request Commission action in Docket No. 01-151, RM-10167, consistent with the Potosi Rulemaking, requesting dismissal of Ozark's request to allocate Channel 276C3 to Eminence, Missouri, and grant of Four Him's Counterproposal filed September 4, 2001)

The parties will vigorously prosecute the Joint Petition and do all things reasonably necessary and/or appropriate to obtain a grant thereof.

2. Ozark Consideration: Ozark agrees to take the following actions:

- a. Request dismissal of the Application.
- b. Request the dismissal of allocation of Channel 276C3 to Eminence, MO, as proposed in Rulemaking Docket Number 01-151 and to support, to the extent necessary, Four Him's Counterproposal in Docket Number 01-151.
- c. Support Four Him's Petition for Reconsideration and the Potosi Rulemaking.

- d. Consent to modification of the KJEL(FM) license to specify operation as a Class C0 station or Channel 279C0 Lebanon, MO.

3. **Four Him Consideration:** Four Him agrees to pay Ozark the sum of \$100,000 conditioned on approval of this Agreement and the Potosi Rulemaking allowing KHZR to specify operation on Channel 249C2, Potosi, MO. Payment of the \$100,000 shall be made as follows:

- a. Four Him will deposit \$20,000 in an Escrow Account in the SunTrust Bank in Frederick, Maryland, within ten days of this Agreement. The Escrow Deposit shall be held pursuant to the terms of the Escrow Agreement as provided in Exhibit 1. Four Him will authorize release of the Escrow Deposit to Ozark on grant of the Potosi Rulemaking.
- b. In addition, Four Him shall deliver to Ozark on grant of the Rulemaking a Promissory Note, in form and substance reasonably satisfactory to Ozark, in the amount of \$80,000 bearing interest at the rate of prime plus one percentage point. The Note shall be payable in equal monthly installments of principal and interest over 60 months. The interest rate shall be adjusted every 6 months. The Note shall provide for no penalty in the event of early payment. The Note shall be secured by a security interest and all the personal property owned by Four Him used or useful in the operation of KHZR including, to the maximum extent permitted by law, the station license. Such security interests will be evidenced by the filing of the UCC-1 Form. Ozark acknowledges that its security interest may be subordinate.

4. **Termination:** Either party may terminate this Agreement if the Settlement Agreement and/or the Rulemaking has not been granted within 2 years of the date of this Agreement, provided however, Four Him may in the event Ozark elects to terminate this Agreement, pay the consideration provided in Section 3 and this Agreement shall continue in full force and effect.

5. **Missouri Contract:** This Agreement is a Missouri contract and shall

be construed and interpreted in accordance with the laws of that state (other than laws relating to conflict of laws).

6. **Counterparts**: This Agreement may be executed in counterpart and/or by telecopy and, when so executed, the counterparts, taken together, shall constitute a complete and binding agreement.

7. **Notices**: Any notices required or permitted by this Agreement shall be deemed complete when sent by overnight courier addressed as follows:

If to Ozark: David Shepherd
Ozark Broadcasting, Inc.
300 West Reed
Moberly, Missouri 65270

With a copy to: Lauren A. Colby, Esquire
10 East 4th Street
Frederick, Maryland 21701

If to Four Him: Michael Fallon, Member
Four Him Enterprises LLC
4600 Executive Centre Parkway
Suite A
St. Peters, Missouri 63376

With a copy to: A. Wray Fitch III
8280 Greensboro Drive
7th Floor
McLean, Virginia 22102

IN WITNESS WHEREOF, the parties to this Agreement have set their
hand and seals, and/or the hand and seals of their authorized representative, as of the date
first above written.

OZARK BROADCASTING, INC.

By: _____
David Shepherd, President

FOUR HIM ENTERPRISES LLC

By: _____
Michael Fallon, Member

IN WITNESS WHEREOF, the parties to this Agreement have set their
hand and seals, and/or the hand and seals of their authorized representative, as of the date
first above written.

DEARK BROADCASTING, INC.

By: _____



David Shepherd, President

FOUR HIM ENTERPRISES LLC

By: _____

Michael Fallon, Member

IN WITNESS WHEREOF, the parties to this Agreement have set their
hand and seals, and/or the hand and seals of their authorized representative, as of the date
first above written.

OZARK BROADCASTING, INC.

By: _____
David Shephard, President

FOUR HIM ENTERPRISES LLC

By: Matthew Bross
(Michael Fillion, Member)
MATTHEW BROSS